

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 3:04-CV-30001 (MAP)

MICHAEL J. BARNETT, M.D.	)	MOTION TO DISMISS FOR LACK
	)	OF PERSONAL JURISDICTION
Plaintiff,	)	OR, IN THE ALTERNATIVE, FOR
	)	TRANSFER
EAST CAROLINA NEUROLOGY, INC.	)	
Defendant.	)	

Defendant East Carolina Neurology, Inc. ("ECN") hereby moves (I) to dismiss this action, pursuant to Fed. R. Civ. P. 12(b)(2), for lack of personal jurisdiction; or (II) in the alternative, to transfer the action, pursuant to 28 U.S.C. § 1404(a), to the Eastern District of North Carolina.

In October, 2002, plaintiff Michael J. Barnett, M.D., a physician and a resident of Massachusetts, entered into a part-time employment contract with ECN, a North Carolina corporation with offices in Greenville, North Carolina. From January, 2003, until on or about March 21, 2003, when ECN terminated the contract, plaintiff was present at ECN's offices in North Carolina to provide services under the contract. Plaintiff's complaint alleges breach of contract, breach of the covenant of good faith and fair dealing, fraudulent inducement, and unfair and deceptive trade practices in violation of Massachusetts and North Carolina law.


As grounds for this motion, ECN states that the action should be dismissed for lack of personal jurisdiction because ECN does not transact business in Massachusetts within the meaning of the Massachusetts long-arm statute and the exercise of jurisdiction over ECN in Massachusetts does not satisfy constitutional due process concerns. In the alternative, the action should be transferred to the Eastern District of North Carolina, where, with the exception of plaintiff, all witnesses known to ECN, as well as all records

relevant to this action, are located, and where plaintiff rendered all services pursuant to the parties' contract.

Dated: February 2, 2004

The Defendant  
EAST CAROLINA NEUROLOGY, INC.  
By Its Attorneys:

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**REQUEST FOR ORAL ARGUMENT**

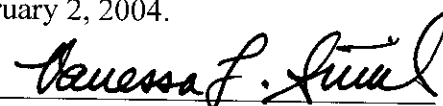
Pursuant to Local Rule 7.1(D), defendant hereby requests oral argument on this motion.

**LOCAL RULE 7.1 CERTIFICATION**

I hereby certify, pursuant to L.R. 7.1(A)(2), that I have conferred with plaintiff's counsel in a good faith attempt to resolve or narrow the issues presented by this motion.

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail on February 2, 2004.

  
Vanessa L. Smith